

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

DECIDED ON : MARCH 05, 2015

+ CRL.A. 1528/2011 & CRL.M.A.No.3325/2015

MAAN SINGH

..... Appellant

**Through : Mr.Sumeet Verma, Advocate with
Mr.Amit Kala, Advocate.**

versus

STATE

..... Respondent

Through : Ms.Kusum Dhalla, APP.

**CORAM:
HON'BLE MR. JUSTICE S.P.GARG**

S.P.GARG, J. (ORAL)

1. Challenge in this appeal is to a judgment dated 18.08.2011 passed in Sessions Case No.134/01 arising out of FIR No.125/02 under Sections 363/366/372/373/376/120B/109/34 IPC registered at Police Station Rajouri Garden by which the appellant Maan Singh was held guilty for committing offences under Sections 368/120-B/376 IPC. By an order dated 20.08.2011, he was awarded SI for seven years with fine ₹5,000/- under Section 368 IPC; SI for six months with fine ₹5,000/- under Section 120B IPC; and SI for seven years with fine ₹5,000/- under

Section 376 IPC. All the substantive sentences were to operate concurrently.

2. Accused Santra (since expired), Bhateri (Proclaimed Offender) and Rajesh (Proclaimed Offender), Akhtari, Maan Singh (the appellant) and Kumari Baby were charge-sheeted for the commission of the aforesaid offences. The case was registered on the statement of one Santra under Section 363 of IPC regarding missing of two girls. Later on, one of the prosecutrix was recovered and her statement under Section 164 Cr.P.C. was recorded. Sections 363/366/372/373/376/120B were added. The accused persons were arrested. After recording statement of witnesses conversant with the facts, a charge-sheet was filed against them. Charges were framed under various sections to which contesting accused persons pleaded not guilty. To prove its case, the prosecution examined 21 witnesses in all. In 313 statement, the contesting accused persons denied their involvement in the crime and pleaded false implication. DW-1 (Naresh) and DW-2 (Mohd.Mustaffa) were examined in defence. After appreciating the evidence and considering the rival contentions of the parties, the trial court by the impugned judgment acquitted accused Kumari Baby of all the charges. Accused Akhtari though convicted under Section 366 IPC and Section 120-B IPC, was acquitted under Section 376

IPC read with Section 120B IPC; Sections 373/372 IPC and Section 109 IPC read with Section 376 IPC. The appellant Maan Singh was acquitted under Section 373 IPC but was convicted under Sections 368, 120B IPC and 376 IPC. Allegations against him were that he was aware about the sale of 'X' and confined her in his house for about a month. During this period, he sexually assaulted her.

3. During the course of arguments, on instructions, the appellant's counsel stated at Bar that the appellant has opted not to challenge the findings of the trial court on conviction. He, however, prayed to modify the sentence order as the appellant has remained in custody for substantial period and is not a previous convict. To this, learned Additional Public Prosecutor has no objection if mitigating circumstances are taken into consideration.

4. Since the appellant has given up challenge to the findings of the trial court on conviction and the prosecution has produced overwhelming evidence to establish him guilty, his conviction is affirmed. Nominal roll dated 19.02.2015 reveals that the appellant has remained in custody for four years, eleven months and ten days besides remission for ten months and twenty six days as on 17.02.2015. He is a first time offender and is not involved in any other criminal case. He is not a

previous convict and his overall conduct in jail is satisfactory. He has not availed any interim bail/parole or furlough during the whole period of custody. His age has been stated to be 33 years. Sentence Order records that the appellant, a rickshaw puller, was a married man having three children to support; to take care of his aged parents. All his children were aged in between four years to 1 ½ years. He is the only bread-earner of the family and is not a habitual offender. The trial court record further reveals that the prosecutrix was major and lived with the appellant in his house for about one month without raising any hue and cry. She has admitted that the appellant wanted to marry her and had even taken her to the court to perform marriage. Co-accused Kumari baby and Akhtari against whom there were serious allegations of sale of the prosecutrix have since been acquitted.

5. Considering the mitigating circumstances, sufficient and adequate reasons exist to award sentence less than seven years under Section 376 IPC. Accordingly, the period already undergone by the appellant in this case shall be treated as the substantive sentence awarded to him in this case.

6. The appeal stands disposed of in the above terms. Trial Court record (if any) along with a copy of this order be sent back

forthwith. A copy of the order be sent to Jail Superintendent, Tihar Jail for intimation. The appellant be released forthwith if not required to be detained in any other case.

(S.P.GARG)
JUDGE

MARCH 05, 2015

sa